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Chair

Ms. Julie Dabrusin

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● (1100)

[*English*]

The Chair (Ms. Julie Dabrusin (Toronto—Danforth, Lib.)): Welcome, everyone, to the 120th meeting of the Standing Committee on Canadian Heritage.

Today, we're continuing our study on remuneration models for artists in creative industries.

For the first hour we have with us, from the Canadian Association of Broadcasters, Nathalie Dorval and Susan Wheeler; and from the Screen Composers Guild of Canada, we have Ari Posner and Paul Novotny.

Perhaps we'll just go in order. We can begin with the Canadian Association of Broadcasters, please.

[*Translation*]

Ms. Nathalie Dorval (Chair, Board of Directors, Canadian Association of Broadcasters): Ladies and gentlemen, on behalf of the Canadian Association of Broadcasters, we want to thank you for the opportunity to appear before you today to discuss issues relating to copyright, including remuneration for content creators. These are matters which are integral to our businesses.

[*English*]

Local radio in our country remains a popular source for local entertainment, but it is also a critical source of news and information to Canadians from large urban centres with diverse ethnic populations, to the most rural, remote and first nation communities. It shares our stories and our music with Canadians young and old, in their cars, on their phone and online, or simply in their homes. From emergency alerting to local news in a variety of languages, radio connects communities. In fact, radio is one of the sole sources of local news and culture in rural and remote communities across Canada, many of which have already felt the sting of local newspaper and television closures.

Radio also plays a key role in maintaining the health of the Canadian music ecosystem. Not only is private radio the number one source for discovering Canadian music, it is also the number one source of funding for the development, promotion and export of Canadian musical talent. Last year alone, private radio contributed $47 million in Canadian content development funding, the majority of which was directed to the country's four largest music funding agencies: FACTOR, Musicaction, the Radio Starmaker Fund and Fonds RadioStar. These agencies provide critical support to Canadian music labels and artists to create, promote and export their music internationally and across our vast country.

[*Translation*]

We are proud of the role we have played in helping to create the vibrant and successful community of internationally successful music artists our country enjoys today.

We are also very proud of the local star systems we have created in the communities we serve which was achieved through steady investment in local broadcast talent and the content they create every day that keeps our listeners tuning in. We believe our continued investment in local talent is a key differentiator and plays a critical role in attracting local audiences in a very crowded media environment where we compete with regulated and unregulated players.

● (1105)

[*English*]

We understand the role of this committee is to review aspects of the Copyright Act that may impact remuneration to artists. In this context, we would like to emphasize that the music industry is a broad ecosystem that involves artists creating music, record labels marketing and selling the music, and radio, in its unique position, to promote the music. It is critically important that the government exercise great care before tampering with this ecosystem.

It is also critically important that a distinction be drawn between remuneration to artists and remuneration to the predominately U.S.-owned, multinational record labels that appear before you, claiming to represent artists. Indeed, it was refreshing last week to see a successful artist like Bryan Adams appear before you and speak clearly from the artist's perspective. The proposals he made to you give a voice to the distinction between artists and labels.

[*Translation*]

We believe that the Copyright Act, in its current form, strikes the very delicate balance of ensuring artists are remunerated for their work while also ensuring that local radio has a reasonable and predictable copyright regime that reflects its continued investment in local talent, communities, and musical artists.

Indeed, section 68.1 of the act provides important support for local radio stations by mandating that radio will pay neighbouring rights of $100 on the first $1.25 million in revenue and then pay a higher rate through a percentage of advertising revenue which is set by the Copyright Board of Canada. So, while the rate structure for neighbouring rights payments is subject to this special measure, as Parliament intended in 1998, the music industry still collects over $91 million in copyright payments from private radio each year.

If Parliament agrees to amend the Copyright Act by removing this exemption, the primary beneficiaries will be the multinational record labels who are proposing it. Under the existing neighbouring rights regime, payments are allocated 50/50 between performers and record labels. Where the money flows from there is unclear and worth further discussion before any amendments to the act are contemplated.

[*English*]

What we do know from publicly available information is that Re:Sound, the copyright collective responsible for distributing neighbouring rights payments, takes 14% off the top in administrative fees before anyone gets paid. Of the remaining amount, the music industry has carefully concealed where that money might go.

For example, in the English market, based on radio repertoire, we estimate that, of the performer's share, after administration costs are deducted, 15% goes to international performers and 28% goes to Canadian performers. Of the label's portion, no less than 41% goes to multinational record labels, with Canadian labels receiving only about 2%. What this tells you is that multinational record labels will be the primary beneficiaries of the proposed change to section 68.1 at the cost of local Canadian businesses.

The multinational record labels are also asking you to change the definition of "sound recording" in the act to extract additional royalty payments from television broadcasters. In fact, the labels are attempting to squeeze out an additional payment for the use of music from broadcasters, distributors and digital platforms in a television program that has already been paid for up front by the producers of that program. Quite simply, they are asking us to pay twice for the same product, otherwise known as double-dipping.

● (1110)

[*Translation*]

The current definition of "sound recording" is carefully worded to reflect the contractual realities of the audiovisual production sector. This was confirmed by the Supreme Court of Canada in a 2012 decision.

Any consideration of adding new costs on conventional television broadcasters, or on the digital sector, should be rejected as it would diminish Canadian broadcasters' ability to invest in Canadian productions by shifting more than $50 million into the hands of foreign owned corporations.

[*English*]

The Canadian Association of Broadcasters respectfully urges the committee to reject any proposed amendments to the Copyright Act that would harm the Canadian broadcasting sector and jeopardize the important service that local broadcasters provide to Canadians. We reiterate that the current legislation strikes the right balance between rights holders and local broadcasters, and that the proposals being advanced by the music industry risk coming at the expense of local programming and of valued and essential services we provide to Canadians.

Thank you.

The Chair: Thank you for that.

We will now go to the Screen Composers Guild of Canada, please.

Mr. Paul Novotny (Screen Composer, Screen Composers Guild of Canada): Good morning to everybody on the committee.

My name is Paul Novotny. With me is my colleague, Ari Posner. We represent the Screen Composers Guild of Canada, the SCGC.

The SCGC is the industry's national not-for-profit professional trade association. We represent the interests of our members with regard to communicating to producers, broadcasters and government agencies.

The SCGC was formed in 1980 and since 2003 has been certified under the federal Status of the Artist Act. Screen composers create original music for film, television and documentary. That media is exported internationally, around the world.

Unlike Bryan Adams, you might not have known our names until today, but you may very well know our work. I'm going to invite Ari to tell you a little about what he has been doing.

Mr. Ari Posner (Screen Composer, Screen Composers Guild of Canada): Thank you, Paul.

I'm just going to list a couple of examples of my work. Hopefully, you might be familiar with some of them.

One of the shows that people know me for is a radio show. It's called *Under the Influence*, which is hosted by Terry O'Reilly. He's been doing that show for 13 seasons, and I'm lucky that every week when he does it, he says my name at the end, "and music by Ari Posner." That's where most people know me from.

The irony is that I've mostly made my living from doing scoring work for television and for film. Quite a few years ago, in 2010 and 2011, I was working with a colleague in Toronto and we scored the show called *Flashpoint*, which was a big hit for Canada. It was a landmark show because it opened the floodgates to the U.S. for us to be able to start exporting some of our content onto the bigger networks down there. *Flashpoint* was a landmark show for Canada. It was also a landmark show for my career, for sure.

Currently, I'm working with the same collaborator back in Toronto on a show called *Anne with an E*, which is a reimagined version of Lucy Maud Montgomery's story *Anne of Green Gables*. *Anne with an E* just premiered its second season this past Sunday on CBC. It's been given the green light for a third season already and, most pertinent to what we're here to talk about today, it's airing around the world in 190 countries on Netflix.

Mr. Paul Novotny: Some of the broadcast properties that I've been involved with over my career include CBC's *The Hour*, with George Stroumboulopoulos. I wrote the music for that show, and for *CBC News Now* and CBC's *The National*. Seventeen years ago, when the 9/11 attacks occurred, it was my music that underscored CBC's reporting of that horrific incident.

I'd like to tell you about how screen composers uniquely locate themselves in the production ecosystem.

First, screen composers are the first owners of their copyrights. Like screenwriters, screen composers are recognized as key creative individuals, and this is a big separation for us. Our copyright policy currently splits ownership into two types of royalties for us. We get public performance royalties, and we get reproduction royalties. These music composer rights live alongside a separate bundle of the motion picture copyrights that are all embedded together into the one media property.

Once our music is married to picture, it is distributed, and it generates copy remuneration, which is derived from broadcast advertising sales that are reported by the broadcasters. Our remuneration rate is set by copyright policy, not by us. SOCAN is our agent that collects our performing and our reproduction rights internationally. That is the 20th century model of copyright for screen composers.

Further, you may ask, how is our money derived from advertising? Public performance and reproduction rights are calculated on a percentage of quarterly reported advertising sales from the broadcaster. Let's see how this is working in the 21st century.

Ari, can you tell us your story with regard to *Anne with an E*?

● (1115)

Mr. Ari Posner: As I've said, *Anne with an E* is a very good example of what people in my business are facing right now, because it's not working. That model is not working as it should. Copyright is broken in that way. I can give you very specific numbers about that. Netflix reported *Anne with an E* to be the fourth most binge-watched show on their network in 2017. That's a pretty large statistic. That means millions and millions of people from all over the world are watching and enjoying the show, and they're watching it fast. They're binge-watching it. That means they're downloading, downloading, downloading and watching it.

Yes, it's playing on CBC, and I do see some broadcast royalties from CBC, but that's the only place that it's playing terrestrially. Everywhere else in the world, it's on Netflix.

I can tell you that I've seen a staggering drop in the remuneration for that property; I would say it's close to 95%. If it were playing terrestrially in all those places, it would be a massive, massive difference. SOCAN, which is the advocate for someone like me, really has no way to get behind those closed doors of Netflix. Netflix will not give them the data they need in order for them to properly tabulate the views and turn them into a proper remuneration model.

Paul also has some experience with YouTube that he's going to talk about.

Mr. Paul Novotny: Yes. My latest story is about a film for which I wrote music, for a young Canadian upcoming film director and writer by the name of Cleo Tellier. Her film, *Mishka*, which is about teen pregnancy, was posted on YouTube on April 22 of this year. *Mishka* has achieved more than 20 million YouTube views since April 22. That film is generating $3,000 a month in YouTube advertising royalties for her, but under current copyright, there is no public performance or reproduction copyright afforded to me. I spoke with SOCAN about it, and they can't even indicate as to whether any level of proportionate remuneration will come back to me.

Ari and I are telling you these stories but we're also asking, like every other screen composer, what has happened to public performance and reproduction royalties in the 21st century for screen composers. Well, what we're telling you today is they've become insignificant or they don't even exist. The reason is that the money has moved to subscription.

So, what can we do? We don't want to come here and complain. We want to bring ideas. In the age-old adage of business, we're suggesting that copyright policy follow the money. Copyright remuneration policy must be augmented to include and gather money from subscription services.

We have an idea. We'd like to suggest a new subscription copyright levy. It's inspired by an existing blank media levy. We're referring to this as the SCGC copyright model. I'll explain the basic idea. There's been no econometric analysis of this; it is purely a principle, but I would like to explain how we think it could work.

It's an ISP subscription levy that would provide a basic 15 gigabytes of data per Canadian household a month that would be unlevied. There would be lots of room for households to be able to do Internet transactions, conduct business, share photos, download a few things, email, no problem. My own personal experience is that in a family, when you're downloading and consuming over 15 gigabytes of data a month, you're likely streaming Spotify, you're likely streaming YouTube, you're likely streaming Netflix. We think because the FANG companies will not give us access to the numbers they have, we have to apply a broad-based levy. They're forcing us to.

I'll move through this. We also believe that mobile should get some sort of consideration on this. We believe that this is a first response to what is fast becoming a grave economic condition.

The value gap is real. Basically, we're experiencing minuscule copyright remuneration from plentiful media consumption, and it's a woefully disproportionate remuneration. Ari can tell you just a little bit more about that.

● (1120)

The Chair: Unfortunately, because you're at pretty much the end of your time, you might have to try to bring that out through the question and answer period.

Mr. Paul Novotny: Sure.

The Chair: If I could have your 10- to 15-second closing, then we'll move right into questions.

Mr. Ari Posner: If it's okay, I would just like to finish with a quick quote by J.F.K., who said, "The life of the arts, far from being an interruption, a distraction, in the life of a nation, is very close to the centre of a nation's purpose—and is a test of the quality of a nation's civilization."

I'd like all of you in this room to consider that if Canadian creators' rights are not better protected in the digital age, we have a country where people will be totally discouraged from pursuing a career in the arts. I truly believe our country will be less rich for it.

The Chair: Thank you.

[*Translation*]

We will now begin the question and answer period.

Mr. Hogg, you have the floor.

[*English*]

Mr. Gordie Hogg (South Surrey—White Rock, Lib.): Ari was going to say something before he was cut off.

I'm going to give you the opportunity to say the part that we missed out on, in terms of your submission.

Mr. Ari Posner: That's kind of you. Thank you.

I was just going to tell you that the value gap, which I'm sure is a term you've been hearing, is very real, and it's something that I am staring right down the barrel of. There is no question about it.

I think one of the reasons the Screen Composers Guild asked me in particular to be here is that I am right in the middle of my career. I'll be 48 years old this year. I have three young kids. I have a mortgage. I take a vacation or two a year, if we can afford it. I do not live an extravagant or luxurious lifestyle by any stretch. However, the only way I've been able to get this far is because of the value of my intellectual property, which are the scores I have composed. Those are what have allowed me to sustain and nurture a career and a family.

If I had to operate just based on the front-end fees that I get paid for the work I do, it would be impossible to sustain and nurture a career. That downstream revenue is so important to someone like me. Here I am working on *Anne with an E*, which is by far the most popular thing I've ever worked on, and I'm seeing less money than anything I've ever worked on before.

I feel like there is something in the ecosystem that is unbalanced, and I feel that it's copyright. If government can intervene with copyright to make it stronger and bring it up to speed with the times and the rest of the world, we have a chance of bringing back some fairness and balance into that ecosystem.

Thank you for letting me say that.

Mr. Gordie Hogg: Do you have some examples of jurisdictions that have a system that would be amenable to the kinds of concerns you've been expressing as a result of a number of changes that have happened over the past number of years?

● (1125)

Mr. Ari Posner: I guess we could point to the EU, in terms of what they have just passed there.

Mr. Paul Novotny: Yes, the EU has recently passed article 11 and article 13. That's a perfect position to go from, because in Canada, Music Canada and the CMPC recommend very similar actions.

However, the levy we're proposing has not been done anywhere yet. This is a brand new idea, and we honestly hope that it can be considered. We think it's a solution for the world. We would envision and hope that the Government of Canada could adopt what I call a techno-moral responsibility for copyright to advocate moves like this to the rest of the world and find other nations that are willing to subscribe to these kinds of ideas.

Netflix is global, and essentially the 20th century copyright system is fragmented from country to country. I think a big part of Canada's view for the principles of copyright in the future is that we have to seek other nations that have the same values for the creators, and we have to create unions around that. It's the only way to stand up to a global entity like Netflix, Amazon, or YouTube.

Ultimately, as creators, we want to work with those entities. We're not averse to that. We want to share in the royalty. The 21st century copyright should be about equivalence, and right now we're getting the short end of the stick.

Mr. Gordie Hogg: You said techno-moral.

Mr. Paul Novotny: Yes.

Mr. Gordie Hogg: That is an interesting juxtaposition of words.

Mr. Paul Novotny: Yes. I can tell you more about that. There is a book I'm reading that is enlightening me on that.

Mr. Gordie Hogg: Ms. Dorval, you made a reference that any changes to copyright now would be problematic. You feel that there is a right balance between performers and broadcasters.

Could you elucidate that a little more, so I get a better grasp and understanding of why there aren't some significant changes necessary within that framework?

Ms. Nathalie Dorval: Yes.

We're saying that the current balance achieved in the copyright in terms of broadcasters' contribution with remuneration to artists is fair.

Obviously, when we listen to that, we get the sense that the issue is not so much within the regulated broadcasting industry, but as you can see, the money is moving. As we were saying, this is an ecosystem. What these artists are feeling is that their royalty is a portion of advertising revenue, and the broadcasting industry is seeing these advertising revenues moving to online platforms. That is another issue.

This ecosystem is moving, and I do not think the solution is to change provisions that affect radio broadcasters who are largely already supporting the Canadian artists in Canada.

Mr. Gordie Hogg: You made reference to the EU and the strategies there, and you feel that's, internationally, the best example in existence at this point. You think you can augment that, and it will be much more effective if the levy were added to it.

Is that a fair interpretation of your submission?

Mr. Paul Novotny: Very.

The Chair: You have one minute left.

Mr. Gordie Hogg: That's fine. Thank you.

The Chair: Thank you.

[*Translation*]

I will now turn it over to Mr. Blaney.

Hon. Steven Blaney (Bellechasse—Les Etchemins—Lévis, CPC): Thank you very much, Madam Chair.

Thank you to our witnesses.

Thank you to Mr. Posner and Mr. Novotny for describing how the current rights paradigm for multimedia platforms is really changing.

Ms. Dorval, you talked about section 68.1 of the Copyright Act. You told us a bit about the collection mechanism. Essentially, it seems there is scope for collecting royalties, but we are trying to—dare I say—kill the goose that lays the golden egg. You did say, however, that revenues are generated.

Could you elaborate on your position and tell us why you say that the current model provides considerable royalties?

Further, could you explain the situation of smaller radio stations? I said there are two independent radio stations in my riding. How would they be affected by the recommended measure, which is to eliminate this provision?

Ms. Nathalie Dorval: Thank you for your question.

People often think that radio plays an isolated role. When people appear before committees as we are doing today, the main topic is the remuneration of artists. Yet radio is clearly a medium that supports artists and culture in Canada.

We also play an important role. This is the era of fake news. We have debated how important professional, factual news and information are to maintaining a healthy democracy. That is the important role that commercial and private radio plays in Canada. As operators of news and information stations, radio serves a purpose that does not generate profits. The small stations that belong to larger stations make it possible for the large group to subsidize less profitable activities, such as providing news and information across Canada.

Despite the $100 royalty that helps small stations, which account for roughly 60% of the radio stations belonging to the Canadian Association of Broadcasters, the industry continues to collect $91 million in royalties from private radio stations every year. What we want is for this $100 exemption on the first $1.25 million to be maintained.

● (1130)

[*English*]

The Chair: Susan, do you have something to add?

Ms. Susan Wheeler (Chair, Copyright Committee, Canadian Association of Broadcasters): To answer one of your questions specifically, the suggested amendments to section 68.1 would represent a 44% increase on that unit cost. Obviously, that would come as an additional cost to radio broadcasters that they would then have to manage along with their other programming costs.

Hon. Steven Blaney: Can you explain the mechanics of how it works? It's $100 per....

Ms. Nathalie Dorval: It's on the first $1.25 million of advertising revenue, and then the additional tariff kicks in at a higher rate on additional advertising revenues.

[*Translation*]

Hon. Steven Blaney: The $1.25 million are the revenues of an independent radio station, if I understand correctly.

What are the average advertising revenues of an independent commercial radio station?

Ms. Nathalie Dorval: Revenues vary widely from market to market and depend on the radio format, that is, whether the stations are primarily news and talk radio, or primarily music, and according to the type of music. There is a wide range among the 600 radio stations we represent.

[*English*]

Hon. Steven Blaney: Mr. Novotny, I think it was you who mentioned that the artists who produced the movie *Mishka* get $3,000 per month in revenue, but this revenue is not, I would say, trickling down to those who own the creative rights.

Is there any possibility that this $3,000 could either be increased directly from, in this case, I believe, Netflix, or trickle down to those who are part of the package of owning the rights to this creation?

Mr. Paul Novotny: That's an excellent question.

The bottom line is that there's no system in place for it at this point. I don't know how much everybody in the room knows about the way Google runs its business and the way people who post videos on YouTube monetize their work. I don't know all that much about it, but the bottom line is that if you get a lot of views, there is a proportional remuneration that comes from their advertising model that goes to the filmmaker, but that completely sidesteps the tradition of public performance, royalty and reproduction rights.

When I spoke with SOCAN, I asked how this was going to work for the future. They said they didn't know. We can't get any information from them. Netflix is very tight about what it is they release, as we all know. For YouTube it's a similar situation.

Ari and I discussed this so much when we were coming here. They are forcing us to look at a broad-based response to the way they're treating our marketplace. That's what inspired this idea of looking at the blank media levy. So I can't think of a way.

● (1135)

Mr. Ari Posner: I might add that it would be preferable if there could be far more transparency in what's going on, because that would allow the performance rights organizations like SOCAN to be able to actually see the data, and be able to help remunerate properly.

Hon. Steven Blaney: Absolutely, I understand.

What you're saying, in a nutshell, is that in an ideal world, if there were possibilities to get more transparency on the way this $3,000—in this case—is being distributed, that would be the ideal way.

Mr. Ari Posner: Absolutely.

[*Translation*]

Hon. Steven Blaney: Thank you.

The Chair: Mr. Nantel, you have the floor for seven minutes.

Mr. Pierre Nantel (Longueuil—Saint-Hubert, NDP): Thank you, Madam Chair.

[*English*]

Despite all of our chair's goodwill and sincere intentions for creators, we are facing a government that has been shy in requesting what has to be done, a simple GST on subscriptions to Netflix. Just from that alone, what can we expect from them, really?

We all have to face this. We hear about the artists, and we're not even able to add on GST to a subscription to Netflix. This is ridiculous, completely ridiculous. There's no point, and Mr. Morneau may hide it in all sorts of phrases like, "We are coordinating with the international...." No. GST, a destination tax, is something that is required almost everywhere, if I'm not mistaken, even in 27 of the United States. He's really diluting the issue of GST, which is ridiculous. It is because of these guys who are going to say, "Netflix tax? Argh!" It is not a Netflix tax. It's the GST, my friend. That's it.

It is also this government that said no to recommendation 12 in that big report we had on the disruption of media, which said we should have Internet providers supply some sort of fund, like the Canada Media Fund. This is because the principle at that time was if your business is into providing international singles and big offers of entertainment to all Canadians, we were under the impression that our Canadian content needed you to put 5% of that good, big business into funds so that we could create our own stories on the screen. Again, we heard, "No, we will never do that. No, no, no. Why would we do that?" I'm going to tell you why.

It's because, Ms. Dorval, I've been working for, I would say, 23 years in the music and TV-related business and I was directly involved, from 1987 to 2002, in the relationship between radio broadcasters and television and music. It is so right when you say that you've been the best partner that we could have, so right. In the situation that we're facing now, these creators simply don't have enough money to put food on the table for their kids. That's what's happening. We need to open our eyes. We need to stop saying, "I don't want to see that and I'm going to watch Netflix on the train while riding back home." We have to face reality. Broadcasters, artists, creators and cable distributors have all been involved in what Mélanie Joly used to call, "an ecosystem", and that is so right. It was right, and it worked.

How come it worked? When Bryan Adams was here—and we shall not get into the star thing: "Oh, Bryan Adams"—Bryan Adams is an accomplishment of our system. Why has he been signed? It's because the label—I think it was A&M that signed him at the time—knew there was MAPL content to face for radio broadcasting in Canada. They said, "We'll sign this guy, and we will commit to our commitment to be involved in the Canadian industry and the entertainment business." The Canadian content that they were looking for is why they do it.

Nowadays, what do we do? We do zip. We do zero. You're so right to tell us about the EU approach.

[*Translation*]

I would like to clarify something. Ms. Dorval, you said that multinationals get a large portion of the revenues from the various public performance rights. Yet you know very well that it is a different story in Quebec. You should say that, in Quebec, most of the big artists sign with independent record labels, which often have interests in their publication. They are small record labels, with people who are very committed and work as a community. So it is a different story in Quebec.

Mr. Novotny, you said we should take a global approach that you describe as techno moral, like the approach of companies such as Netflix. We had a global approach in the past and it worked. If Bruce Springsteen had not received public performance rights for his songs on the radio, A&M or CBS would not have sent a copy to radio stations and told them not to play it. Radio stations would simply not have received it and would not have played it. There has been harmonization of measures with other countries in the past.

● (1140)

We live in an international context and people will not want their work performed in our country if they do not receive royalties.

I would like to hear your opinion. It is of course very important, Mr. Novotny and Mr. Posner, for the artists to come here to speak for themselves. Agencies that collect royalties certainly can behave subjectively at times. They earn their living through the mechanical aspect, so we would like to preserve that. Others earn their living from the public performance of music on the radio or under continuous streaming contacts. The agencies have their own visions since collecting royalties is their job. For your part, you are the real artists and we are glad to hear your point of view. You are the reason we are here.

Moreover, Ms. Dorval and Ms. Wheeler, you both have experience negotiating with committees. I would like to hear your opinion on a feeling I have that really bothers me. I am not saying this to be mean. Honestly, I like everyone here; you are all good people. I must say, however, that just about everyone got lost because half of your brief was so complicated. It makes us wonder how much those artists receive in royalties and where they come from.

Do you not consider it a bit worrisome that the government has mandated both the Standing Committee on Industry, Science and Technology and the Standing Committee on Canadian Heritage to study this matter? We really do not know where we are going. For my part, I need a bit of roadmap. I will ask the chair of our committee because I know she is in very good faith. Could we zoom out to get a better idea of where we are at?

Both committees are working away. No one will have a complete opinion. You were certainly there at the workshops in 2012. The parties had specialists who knew the subject well. They helped us understand. It is both very complex and very important for our culture.

I would like to ask each of you the following question and you can take the remaining time to answer. Do you think the government should explain what it is trying to achieve? Can we for instance draw on European Union legislation to see whether we can do that?

The Chair: Your time is up.

Mr. Pierre Nantel: That's okay.

The Chair: Ms. Dhillon now has the floor for seven minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Madam Chair.

[*English*]

Thank you to all our witnesses for coming in today.

I'll start with you, Mr. Novotny. Since you represent this group, could you please tell us a bit more about the copyright policy and the setting of remuneration and how your members are affected by this, and any other things they have come up with?

Mr. Paul Novotny: I will do my best.

The bottom line is that screen composers are not able to determine their own rates. We rely on copyright policy to do that for us. There's probably no other business in the world where somebody can bring their product to the marketplace and have an agency set their rate.

The responsibility of government policy to set a responsible rate thwarts the bias that we often hear. The way the rate has to be set is that it has to look into the community, the society, the way screen composers go to work every day.

I remember hearing a staggering figure about Daniel Ek, the creator of Spotify. When Spotify first became an entity that was streaming music around the world, his salary was published. As the owner and creator of that service he was reported to be making around $24 million to $25 million per year. In the same year, I remember looking at what Gordon Nixon was making as the CEO and director of the Royal Bank of Canada, which was about $12 million. I looked at the list of all the other people at Spotify, and the directors were all in the double-digit millions. Artists were making nothing, and you know that story.

Dan Hill once said to me that when two songwriters embark on writing a song together, there's no discussion about who owns what word, who wrote that melody, who wrote that motif or that theme. No, we drop those things at the door, and it's a fifty-fifty deal. If three songwriters collaborate, it's understood it's a three-way deal, because you can't track those small differences.

Screen composers and songwriters are faced with a really badly biased situation, whereby all the media companies that are delivering the data over their pipes are making a lot of money compared to us. We're seeing that kind of remuneration to the directors of the services that are subscribing them, Netflix, etc. We want a fairer deal.

Copyright is the shepherd of our creative industry. It's like Mother Nature. If you read the paper we authored, our vision is that a techno-moral and virtuous copyright policy will observe when there's imbalance in the system that is leading to the extinction of some of the players somewhere in that ecosystem. Like Mother Nature, it has to intervene and protect. If it doesn't, and if the screen composers, for example, start to not be able to make their own living, that means the orchestrators, the arrangers, the lyricists, the music editors, the recording studios, all our suppliers are going to feel that. We have to right this problem. The 20th century model no longer works. I've explained why, and so does the paper.

Does that answer your question?

● (1145)

Ms. Anju Dhillon: Absolutely.

You mentioned two other things that seemed to be troubling you.

During your testimony, you mentioned that the copyright policy splits your ownership. The other thing is digital access. What changes can we make? Digital access has given great exposure, but at the same time there are downfalls. Do you or anyone else want to testify to that?

Mr. Paul Novotny: I don't want to take all the oxygen out of this, but we believe technology should not even be in the equation. Copyright is copyright, and it should be agnostic across all existing and all future technology. Copyright addresses ownership, and it addresses remuneration for the idea. As to how it's distributed, as long as it's fair, that's the idea. I think we want to support a techno-moral, virtuous vision of copyright policy for the 21st century across the board. I would love it if Canada took this stance to the world, as we did with cultural policy through UNESCO.

Ms. Anju Dhillon: Thank you.

Would anybody from the Canadian Association of Broadcasters like to add anything?

Ms. Nathalie Dorval: It's really refreshing and sad, but it's true that we used to be in an ecosystem that was largely protected from foreign competition. We are all seeing the impact of this on the broadcasters and on the artists here, because we have all these new players coming from everywhere and they are not contributing to this system. For example, Netflix is not providing.... I'm not privy to that as well as you are, but clearly there is something there. There is something there because there are new players in the ecosystem and they are not contributing as regulated industries are.

Mr. Ari Posner: If you look at the Emmy Awards this year, you could see a very clear trend in terms of the highest-quality shows that are being the most awarded and watched. They're all coming from the streaming services. They're all coming from Amazon Prime, Netflix, Hulu. Those companies are making tons of money distributing the content—more money than ever before—but it's not being fairly shared. We need to be able to look at that in a different way and determine how we can see what's going on behind closed doors, how we can have access to that information, and make sure that the creators' rights are protected.

● (1150)

The Chair: That is the end of your time.

We will be going to Mr. Shields, please, for five minutes.

Mr. Martin Shields (Bow River, CPC): Thank you. I will share it with Mr. Yurdiga.

I have a couple of questions. I really appreciate the witnesses being here.

I'm going to the Canadian Association of Broadcasters. We haven't heard from major record labels yet, as you've suggested we might have. They haven't been here. You suggested we may have heard their side. We have heard a lot of artists talking about the 1.25. I don't think anybody has not brought it up. You have a partnership, but one of your partners sure doesn't like it. How is your relationship with that partnership if they are totally opposed to your position?

Ms. Nathalie Dorval: That's really interesting.

I'd like to thank Mr. Nantel for bringing up the difference. It is true there's a difference between the English market and the French market.

This exemption is really helping small local businesses such as radio stations, but what we were trying to say in that text—maybe I've lost you somewhere because it's true that it was complicated—is the record labels are actually getting most of that money. Even though you try to increase these royalties from radio, most of it is going to flow out of the country.

Canadian labels get 2% of it. We estimate that Canadian performers get 28% of it, and 78% of this is going to Sony Music, Universal Music, Warner Music.... Is that what we're looking for?

Mr. Martin Shields: No, I got that part.

What I'm saying is, all the artists that have been here want the 1.25 to go away. They have all been stating that it should be gone. That's the reason you exist. If you didn't have any musicians, you wouldn't be in business.

Somewhere, you have a fundamental problem with your main partner in understanding this. They don't understand it or somebody doesn't understand the issue here. Your partner doesn't understand this.

Ms. Susan Wheeler: I believe witnesses from Music Canada and from Re:Sound have appeared before you. Both of those organizations are controlled and owned by the major record labels. They have brought artists in before you. I believe those artists were speaking to a different issue, because those artists were not played on the radio. They wouldn't have received the royalties that we're talking about here today. They obviously have other interests that they wanted to speak to you about that are very important to them, but for this particular issue, we're saying that the majority of the increase would flow outside of Canada.

Mr. Martin Shields: No, I got that.

Ms. Susan Wheeler: I think that is one of the considerations in contemplating the right balance. You have to consider that this is money that is currently being spent on local Canadian programming, as opposed to going outside of the country.

Mr. Martin Shields: I just think your partner's got a problem, in the sense they tell us something different.

Ms. Susan Wheeler: I think the partnership between the labels and the artists is something that needs to be looked at. Right now, they have to split that remuneration fifty-fifty. That's prescribed under copyright legislation. If there's a willingness to rebalance that, then certainly that split could be looked at in favour of the artist.

Mr. Martin Shields: Okay, thanks.

Go ahead.

Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC): Madam Chair, it's interesting. When I was growing up, I went out and bought—I'm not going to say an eight-track—

Voices: Oh, oh!

Mr. David Yurdiga: —but cassettes, and CDs, and so on. But it was easy to track. There was a means where the artist could say, "Yes, last week I sold *x* number of CDs. Where's my revenue, my remuneration?"

My children grew up in a digital age. They're getting stuff from wherever. There are grey area markets. I'm not saying they're doing that, but there are so many options.

A lot of this revenue is not realized. How do we police the digital era right now? It's a struggle, because you know that file sharing and everything else really does affect the artist and whoever owns the copyright. There are a lot of issues.

Can you comment on that?

The Chair: You have less than a minute.

Mr. Ari Posner: I can just tell you that Netflix, for example, knows how many people watch their shows. They know more than that. They know when you get up to go to the bathroom. They know when you hit pause and when you start it again and how fast you went through that series. They have all that information.

I can't speak in such a sure way about YouTube. YouTube is a place where all the kids go to watch videos and listen to music, but you know that it's a company that is making a lot of money from content that's being uploaded and not being protected properly. How do you police it? That's a very good question.

● (1155)

Mr. Paul Novotny: I would like to add something to that. The idea that we have for a levy to go on ISP is a very good way to start addressing that, because it's going to basically derive something from stream ripping, which is a big problem. When people post on YouTube, etc., they are consuming data to watch it. It might not be a perfect system, but it is, as I say, the first step to start to balance the equation. That would be perhaps the cleanest answer.

The Chair: Okay. We'll be going for our final questions.

[*Translation*]

Mr. Breton, you have the floor for five minutes.

Mr. Pierre Breton (Shefford, Lib.): Thank you, Madam Chair.

My first question is for Mr. Posner.

All this new digital content arrived on the market a number years ago. You did of course have revenues. How many years have you been in the field, Mr. Posner?

[*English*]

Mr. Ari Posner: It's about 25 years.

Mr. Pierre Breton: Okay.

[*Translation*]

So you have been in the field and have been a creator for many years.

What if any changes have you seen in your revenues in the past 25 years? Do you have to work harder to meet your needs? How has it evolved?

[*English*]

Mr. Ari Posner: There has definitely been a decreasing trend in the revenue from SOCAN, which collects that advertising money. It's not rocket science why. That money is moving elsewhere. I do find now that a lot of the jobs that are coming my way—and this is significant—are shows that are going to be streaming, shows that are going to be on Netflix. A lot of the production that's happening in Toronto, where I live, are shows that are either going to be partnered with Netflix or going to be only on Netflix, and I'm thinking that I have to do the job. If I don't take Netflix jobs, I'm going to put myself out of business.

I have to do the job, but I now know that, okay, I'm going to be working for whatever I'm getting paid up front, and hopefully some small change that's going to come down later on. It's very troubling for someone in my position.

[*Translation*]

Mr. Pierre Breton: So, if I understand you correctly, for 25 years, you have been working hard if not harder, but your revenues have decreased since the advent of digital content on the market. Is that correct?

[*English*]

Mr. Ari Posner: That's completely accurate, yes.

[*Translation*]

Mr. Pierre Breton: Very well.

Ms. Dorval, I want to thank you as well for being here today.

Earlier, you gave a partial answer to Mr. Hogg regarding your recommendation. I just want to make sure I understand correctly. You are recommending that the Copyright Act not be changed, is that correct?

Here is the second part of my question. In 2012, when copyright was reformed, did you or your organization make the same recommendations as you are making today?

Ms. Nathalie Dorval: Thank you for the question. First of all, we are saying the Copyright Act should not be touched because the proposals to eliminate the exemption in section 68.1 and to change the definition of "sound recording" should not be implemented. A balance has been achieved and we believe it would be counter-productive for Canada, for radio stations, and for artists to change these provisions which have made it possible to achieve that balance.

In 2012, representatives of our industry did not necessarily appear before your committee. When people try to amend the Copyright Act, the positions are not necessarily antagonistic. We think it was a good job. When all the parties are not completely happy, we conclude that the process has been a success.

In short, we truly believe that a fair balance has been achieved as regards the contribution made by broadcasting.

● (1200)

The Chair: You have 30 seconds left.

Mr. Pierre Breton: Thank you very much.

The Chair: Okay.

[*English*]

Thank you to all of our witnesses. It was really interesting to hear what you had to say today.

We are going to suspend briefly while we change over to our next set of witnesses.

●

_____ (Pause) _____

●

The Chair: We'll start up again with presentations, just to make sure we have enough time to get to all of our questions and answers.

We now have with us Jayson Hilchie, from Entertainment Software Association of Canada; and Annie Francoeur, with Stingray Digital Group Inc.

We'll start with your presentation, please, Mr. Hilchie.

● (1205)

Mr. Jayson Hilchie (President and Chief Executive Officer, Entertainment Software Association of Canada): Madam Chair, good afternoon, and thank you to the committee for the opportunity to participate in this study.

My name is Jayson Hilchie, and I'm the president and CEO of the Entertainment Software Association of Canada. We represent a number of leading video game companies with operations in this country, from multinational publishers and console makers to local distributors and Canadian-owned independent video game videos.

Canada's video game industry is one of the most dynamic and prolific in the world. It employs close to 22,000 full-time direct employees while supporting another 19,000 indirect jobs. Our industry's contribution to the Canadian GDP is close to $4 billion. That is not revenue but the salaries of our employees and those who our industry supports with their collective economic impact. Our impact is considerable. The average salary of a video game employee in Canada is $77,000 per year, which is more than double the Canadian average. To put all this into perspective, with 10% of the U.S. population, Canada's video game development is roughly half the size of the U.S. industry, which is the world's largest.

Of the 600 studios that span this country from St. John's, Newfoundland, to Victoria, British Columbia, and all points in between, approximately 85% of them are Canadian-owned. But the Canadian industry is a mix of large multinational publishers and developers and Canadian-owned companies. This mix helps to diversify and strengthen our industry. I cannot stress enough how important Canada is within a global context with respect to the production and creation of video games. We attract investment from our industry's leading multinationals. They are the largest employers in the Canadian industry. Some of the most successful games globally are created by them right here in Canada.

Video game production is one of the fastest-growing industries globally, estimated to generate close to $140 billion in revenue in 2017. Canada is a creation powerhouse supporting this booming industry. However, you don't generate $140 billion in global revenue without being focused on commercial viability, and we are very much a business.

Our industry has matured and our products have evolved. Technology and user preferences have diversified our revenue streams. What used to be an industry that developed a game, put it on a cartridge or disk, packaged it in a box and then put it on a store shelf is now one that offers many different types of products and services in as many different forms. While physical retail still represents close to two-thirds of our revenue, direct-to-consumer digital sales have quickly grown to more than a third of all our revenue, and they continue to grow. Advances in broadband technology and processor speeds make it possible to transmit large files directly onto a PC, console or mobile device, giving consumers options on how they choose to consume our products.

Games are not necessarily finalized anymore when they are published for sale. Many games now live on long after the initial launch, with multiple updates, add-ons, expansions and improvements that allow players to extend their engagement with their favourite games beyond the traditional single-player campaign.

With the rise of the smart phone and its ubiquity, and the business opportunities that came with it, the video game industry went through somewhat of a renaissance that allowed small independent video game studios to develop a game and self-publish it on the App Store or Google Play. This resulted in a boom of new and innovative companies that were suddenly able to take large creative risks.

The business model for many of these mobile games was quite different from what consumers had been used to. While it took a lot of experimentation by many companies, ultimately the free-to-play model of games became most prominent. In this model, games are given away for free in some capacity with the option for players to enhance and customize their experience by purchasing different types of virtual items. In-game transactions that allow players to enhance and customize their experience are now becoming a major source of revenue for our industry. They are also creating more customized and personalized experiences for our players, and this is why they work.

It's important to note that the vast majority of mobile video games are not profitable. Discoverability remains a huge issue for many of these games. While the App Store has created the means for independent studios to self-publish their games, most do not have the resources to then promote them and market their games like the many you see advertised by using celebrities on television. In addition to in-game transactions, downloadable content that offers additional game content post-release is another way our industry has diversified its revenue stream. This content may include new maps, levels, characters, missions and storylines that allow players who love a certain game to continue their experience in all new ways.

As we continue to innovate and look for new ways for our players to enhance their experience, we've also had to pivot for other reasons. Some of the changes we implemented over the years were the result of consumer demand but also the growing necessity to combat piracy.

● (1210)

Piracy has evolved over time and for the most part now resides in an online digital form. One of the ways we have combatted piracy is to move to a model where most of the games we produce have some sort of online component, whether this involves simply creating an account that enables content to be downloaded from a central server or, more commonly, including a multiplayer mode in a game.

These types of games link all players through central servers and require players to be logged in through an account in order to access the online functionality. This is very effective in limiting the ability of counterfeiters to flourish, as pirated games are not able to access the online functions. In most cases, the only content the player accessing a pirated game will be able to use will be the single-player mode, which in our industry is becoming less and less common.

In addition to making games that have this online functionality I just spoke about, our industry uses technological protection measures to combat piracy, both in the form of software encryption technologies and physical hardware found in video game consoles.

These technological protection measures essentially do two things: They work to encrypt the data on a game, which thwarts copying it, and they make copied games unreadable on a hardware console. While in many cases these measures do eventually fall victim to committed pirates who work to crack the game, they do provide a window for a company to sell legitimate copies during a period of most demand, which is often the first 90 days.

As encryption technology improves, it's taking longer and longer for the pirates to crack the game, which improves and lengthens the window the company has to recoup their investment in their product. In some cases, those who sell what we refer to as "modchips" offer their services online with the promise to allow your console to circumvent the protections found within it and play pirated games. These circumvention devices were made illegal in Canada in 2012 as part of Canada's modernized copyright legislation.

In fact, just last year, Nintendo used Canada's copyright law to successfully challenge and sue a Waterloo, Ontario, man who was selling circumvention devices online. After a lengthy process, Nintendo was awarded over $12 million in damages, and multiple media outlets reported that the ruling in Federal Court confirmed Canada's copyright law as one of the strongest in the world.

In order to maintain its effectiveness, the law must continue to provide protections to content creators in the video game industry by maintaining the provisions that make circumvention devices illegal. As our economy moves increasingly to one that involves digital goods and services, those protections such as TPMs must remain.

Even in the face of challenges, our industry continues to innovate and experiment with even more novel revenue models and more choices for our consumers to engage with our products. Most recently, there have been moves toward subscription-style models that allow consumers to pay a monthly fee for access to hundreds of games, both recent and back-catalogued, that can be downloaded or directly streamed over the Internet.

An example of a streaming service is PlayStation Now, which for a monthly fee allows customers to access over 650 video game titles over the Internet through a central server. While PlayStation offers multiple subscription options for its service, in Canada you can subscribe for about one year for about $100.

Just recently, Microsoft announced its new Xbox All Access service, which is different from PlayStation Now in that it offers a bundle of items that includes the Xbox console itself, an Xbox Live membership that enables online and community functionality and an Xbox game pass that offers access to more than 100 games available for direct digital download. Microsoft is offering this service for a monthly subscription fee in a variety of forms.

As you can see, the video game industry is constantly evolving the way it engages with its consumers by working to find the best ways to give players the ability to choose, because it really is all about choice when it comes to commercial success. There is a direct connection between remuneration models in our industry and how consumers want to access our content. Video game consumers don't want the industry to tell them how to access our products. We have learned over the years to listen to them and to successfully adapt our products accordingly.

While there is still more to learn, our industry is proud of the way we put our players first, and this has certainly helped create gameplay experiences that are what the players want, as well as remunerative models that work for our industry.

Thank you.

● (1215)

The Chair: Now we will go to Annie Francoeur from Stingray Digital Group, please.

[*Translation*]

Ms. Annie Francoeur (Vice-President, Legal and Business Affairs, Stingray Digital Group Inc.): Hello, ladies and gentlemen.

On behalf of Stingray Music Canada, I would like to thank you for inviting us to take part in the discussion on the remuneration of artists and creative industries in connection with copyright, and more specifically with music, which is our industry.

Founded in 2007, Stingray is a Canadian company headquartered in Montreal that currently employs 340 people in Canada.

We distribute our services both in Canada and abroad. Considering all our services, we we reach an estimated 400 million subscribers or homes in 156 countries. We also serve 12,000 business clients, which represent 78,000 commercial establishments.

For the 2018 fiscal year, approximately 47% of Stingray's revenues were Canadian. The more successful Stingray is abroad, the more Canadian artists benefit from this success.

Stingray's service portfolio in Canada includes an audio music service called Stingray Music, which includes about 2,000 audio music channels offering a hundred or so genres of music. We also offer various on-demand services, including video clips, karaoke, concerts, various products available individually, as well as tens of linear channels on television such as Stingray Classica, Stingray Festival 4K, Stingray Ambiance, and so forth.

We also offer music and digital display services to commercial establishments through our Stingray Business division.

Our services are available on various digital platforms and devices, including cable and satellite television, the Internet, mobile applications, video game consoles, in flight or train entertainment systems, smart cars, WiFi systems such as Sonos, and so forth.

More than 100 music experts right around the world are responsible for programming Stingray's various services and channels. This distinguishes Stingray from various other music services, which use algorithms to select content for their clients. The programming on Stingray's channels is also tailored to the local market and to the demographics of that market.

By necessity, Stingray is also a technology company. The demands of managing a large digital catalogue and distributing that content on various platforms and in various markets require Stingray to stay on top of and at the forefront of technology. Stingray accordingly invests several millions of dollars every year in research and development to remain competitive and retain its clients.

● (1220)

[*English*]

Stingray is committed to encouraging Canadian talent and artists and it participates actively in the development and promotion of Canadian content. During the last broadcast year, Stingray has spent approximately $379,000 in Canadian content development, CCD, initiatives, which include payments to associations such as FACTOR, Musicaction and the Community Radio Fund of Canada, but also awards at music events and festivals, artist performance fees, workshops, educational sessions, and so on.

In addition to such CCD initiatives, after Stingray's IPO in 2015, the CRTC approved the change of ownership and effective control of Stingray, but it required that Stingray pay tangible benefits corresponding to an amount of $5.5 million over a period of seven years.

In addition to those regulatory obligations, Stingray also contributes voluntarily in many other ways to the promotion and development of Canadian artists. Very recently, Stingray partnered with ADISQ to create a new music video channel made available through television operators in Canada, named PalmarèsADISQ par Stingray.

Pursuant to Stingray's desire to invest in young talent, a portion of the profits generated by such channels will be invested in local music video production through existing third party funds such as Fonds RadioStar. Through this initiative, Stingray will finance the production of music videos broadcast on its channels but will also help develop the career of up and coming Quebec and Canadian directors and artists.

Each year, Stingray also gives certain amounts to events of partners involved in the development and promotion of Canadian talent. For example, Stingray has been a regular sponsor of panels at les Rencontres de l'ADISQ and other similar events.

Stingray also produces the series *PausePlay*, which consists of exclusive interviews and intimate performances of popular and emerging artists recorded live to promote their new album or tour. Such recordings are then made available by Stingray on social media platforms and channels to offer important exposure for these artists. We also offer editorial coverage on the Stingray blog about album reviews, concert reviews, etc.

Stingray is not here today to ask anything of the committee. Stingray appears before the committee to propose a solution, or at least part of a solution, to help Canadian artists.

We believe that some unregulated industries should be regulated. For example, the Stingray services that are offered through television are subject to Canadian content minimum requirements, as are the commercial radio stations. If we want to promote and encourage the visibility of our Canadian artists, Stingray believes that commercial background music services should be included in the Broadcasting Act and be subject to similar requirements. Such measures would apply to Stingray, because Stingray is one of the biggest background music suppliers in Canada right now.

Let's think about it. Why would the communication of music in a retail outlet that uses the services of a background music supplier be treated any differently than another outlet that plays radio as background music, or any differently than when such a person listens to a TV music channel in his home?

We submit that no such distinction should be made, and we made the same submission before the CRTC in our comments on future programming distribution models in February 2018.

We strongly believe that our proposal can provide Canadian artists with excellent promotional platforms as well as additional revenues.

Thank you.

[*Translation*]

The Chair: Thank you.

We will now proceed to our question period. I yield the floor to Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thank you, Madam Chair.

I'll begin with the representative from Stingray Digital Group Inc.

Ms. Francoeur, thank you for your presentation. It's rare that people come to the committee without making demands, but rather to propose a solution.

We did some calculations regarding what artists receive from YouTube and other streaming services. I also did this exercise myself. To obtain a minimum salary of $2,400 per month, you need 16.8 million views per month on YouTube. On another platform, you need 9.7 million clicks to arrive at the same salary. It takes a lot of these clicks in a year for an artist to be able to survive.

Can you tell us what the equivalent would be on Stingray?

● (1225)

Ms. Annie Francoeur: Unfortunately, we don't have that information. Stingray is not a completely interactive service like YouTube or Spotify, and we don't deal directly with the rights holders. We pay our royalties through collective management companies.

We have no way of knowing how SOCAN or Ré:Sonne, Re: Sound, then distribute the revenues among their members. I don't know what royalties the artist receives, ultimately, for using our services.

Mr. Randy Boissonnault: Has the ripping, or digital extraction, phenomenon lead to consequences for Stingray?

Ms. Annie Francoeur: No, not at the moment.

I have done some reading about it, but up till now we have not seen any consequences.

We do not even know if there has been any ripping from our platforms.

[*English*]

Mr. Randy Boissonnault: More specifically, with regard to the recommendation you have made today, how would that actually put more money in the pockets of artists who are using the Stingray platform?

[*Translation*]

Ms. Annie Francoeur: At the present time, our Stingray Music service for television must offer a Canadian channel for every non-Canadian channel that is made available.

On Canadian channels, 35% of the content has to be Canadian. Here I am setting aside other requirements concerning French-language content. There is no obligation currently for background music service providers to offer Canadian content.

If a provision were put in place, as Stingray suggests, 35% of the content we hear in stores would be made up of Canadian content. Royalties would necessarily then be paid to SOCAN and Re:Sound, and would be distributed to their members.

Mr. Randy Boissonnault: According to your experience, do you think that francophone artists receive more money than anglophone artists thanks to Quebec programs?

Ms. Annie Francoeur: I do not have that information.

Mr. Randy Boissonnault: Thank you.

[*English*]

Mr. Hilchie, I come from Edmonton. I'm the member of Parliament for Edmonton Centre. I know the doctors who started BioWare, and then went on to great fame after that. You know, you can go from video games to running a microbrewery. I mean, that's what one of my colleagues did.

Mr. Jayson Hilchie: That's what Greg did.

Mr. Randy Boissonnault: Yes, that's what Greg did.

When musical works are used in video games, how are artists remunerated? Is it industry standard, and if not, how could it be improved?

Mr. Jayson Hilchie: Each video game company would have their own agreements with the music they would license, but they would all go through licensing that music and paying for it up front, before the game is made in most cases. It would all be done through agencies and rights-holders groups and things like that. Very rarely would it be done in an informal capacity.

It would be best to speak to individual companies about what they do, but I know, for instance, that if they have music in a game, it is licensed and it's done through a proper process.

Mr. Randy Boissonnault: Do you have statistics on the number of people the video game industry employs in Canada? If not, could you send those to us?

Mr. Jayson Hilchie: We employ 22,000 employees directly and we support another 19,000 indirectly. Those would be people who are working because of the video game industry, such as motion capture artists, and in some cases musicians who work on the games, and so forth, but it would also involve all sorts of other people. It's just over 40,000 direct and indirect employees in Canada.

Mr. Randy Boissonnault: Where are your video game hot spots in the country?

Mr. Jayson Hilchie: They are in Quebec, Ontario and British Columbia—primarily in Montreal, Toronto and Vancouver, but Edmonton is growing.

Mr. Randy Boissonnault: We're continuing to support that growth.

You mentioned piracy. Are there other things that this committee should be concerned about, or is that primarily the work of our colleagues at the industry committee? I also sit on the justice and human rights committee. I'm interested in what we can do for extraterritorial pirates. The laws of Canada are limited, but if you have suggestions for this committee to look at, I'm interested.

Mr. Jayson Hilchie: The ability to prosecute these people in Canadian courts when we find them in Canada was a huge step forward for us. As I said, our members have already utilized that law in order to tackle one that was a prolific modchip seller for a number of years.

I would certainly include thoughts in any subsequent submission that we put in, but for us—I'm in front of the industry committee next week as well—our main ask is to ensure that technological protections do remain in any review of the Copyright Modernization Act.

[*Translation*]

Mr. Randy Boissonnault: Thank you.

Ms. Francoeur, do you have any other suggestions as to what we could do so that more money reaches the artists?

Ms. Annie Francoeur: We made other proposals to the CRTC, such further regulation of other services or other kinds of industries that are not regulated for the time being.

We are concerned by the fact that cable distributors who have platforms or digital set-top boxes using a much more advanced or developed technology can now offer applications like Netflix or other services that are not regulated.

We made another proposal to the CRTC about that. As soon as there is a digital set-top box or basic device unit, all of the available content should be subject to the same regulation. If you want to drop Stingray Music, for example, because all of the music you want to listen to is offered by Spotify or Apple Music, those services should be subject to the same Canadian and French-language content requirements.

● (1230)

Mr. Randy Boissonnault: Thank you to both of you.

The Chair: Thank you very much.

Mr. Blaney, you have the floor.

Hon. Steven Blaney: Thank you very much, Madam Chair.

I want to welcome our witnesses.

I also want to take this opportunity to congratulate them. They represent some very successful Canadian businesses—and there are many in Quebec—that work in a very dynamic sector.

[*English*]

My first question is for you, Mr. Hilchie.

You mentioned Xbox All Access as well as PlayStation. In your opening remarks you said you were in a mature industry, but now it seems as if you're.... Could it impact the way you distribute your video games if the kids, instead of buying a game, subscribe?

How do you see this? Is it a threat or an opportunity for your industry?

Mr. Jayson Hilchie: The first answer is that I think we all see it as an opportunity. The ability to give consumers what they want in the way they want it is one of the reasons our industry is so successful.

With respect to the service models, as I said in my statements, it used to be in our industry that you bought our games on a disc in a box. You would go to the store and get it. Barely two-thirds of our revenues now come from that model. It's still quite prolific; it's still our major source of revenue, but we're already moving down a path where our games are being digitally distributed directly from the publisher or the console maker onto a box. Quite frankly, a subscription service is just another way of offering games in a digital format.

Hon. Steven Blaney: Just for my knowledge, in those video games, when you are using artistic material, are you paying copyright to those artists?

Mr. Jayson Hilchie: If we were using someone else's material in a game that wasn't already owned by the company, then the publishers and developers would have had to license that material, but if it's made by that company, using internal artists it employs, then it would have its own copyright.

Hon. Steven Blaney: Thank you.

[*Translation*]

Ms. Francoeur, you say you made a recommendation here, and to the CRTC, concerning what you call background music. Could you tell us about your proposal?

Ms. Annie Francoeur: In the course of proceedings before the CRTC, we responded to Broadcasting Notice of Consultation CRTC 2017-359-2, in which we were asked to comment on the future of programming distribution models. We submitted our proposal last February, and it included the two points I mentioned earlier, among others. We don't know what these proceedings will lead to.

Hon. Steven Blaney: Fine.

Madam Chair, I am going to share my speaking time with Mr. Shields.

[*English*]

Mr. Martin Shields: Thank you.

It's great to have you here and to listen to your information.

On entertainment software, I'm an old guy. I remember the Commodore. I remember playing Pong when it came out, and I thought that was exciting.

The Chair: Eight-tracks and Pong.

Voices: Oh, oh!

Mr. Martin Shields: This was before eight-tracks. Trust me.

Where are you going in the future? Gaming is changing drastically to an audience-watching league format. It's changing drastically in the sense of where it's going. How do you view that change in the industry as we now see stadiums full of people watching game players?

Mr. Jayson Hilchie: One could make an argument that it is now an industry of its own. I think the CEO of the Canadian Olympic Committee just left his job two weeks ago to become the head of an e-sports team in Toronto. That says something.

I guess I'll preface it by saying that I think the way we look at it is that e-sports is an industry that's running parallel to our creation and development side. It's not necessarily intertwined. You still have to make the games in order for people to have something to play and then others to watch.

I'm less involved and our organization is less involved in the e-sports side of things, but it's definitely a huge opportunity for our industry with respect to becoming more mainstream and more ingrained in the culture of what people do, especially given the fact that we certainly consider video games to be mainstream entertainment, something that everybody does, something that's played by both men and women, people across all demographic spectrums. E-sports is simply an extension, an evolution of the industry in a sense.

With respect to where our industry is going from a creation standpoint, that's a really good question. I'd be lying if I told you I knew, because nobody does. We are going in the direction of some really exciting developments, with virtual reality, augmented reality, and the things that those two technologies are doing with taking games away from a 2-D screen and putting them into a more immersive context. I don't know if you've had an opportunity to put a VR headset on—

● (1235)

Mr. Martin Shields: Yes.

Mr. Jayson Hilchie: —but I could definitely arrange it for you, if you are interested.

It really is a wild type of technology that's revolutionizing not just our industry but also a variety of other industries. We did a conference here in Ottawa last October at which we showed how virtual reality was training surgeons. It was allowing people who were going to the hospital to experience surgical procedures and lower anxiety before even leaving the house. It lets you learn how to maintain your aircraft by doing it virtually before ever setting foot in a physical environment, and those types of things. Our industry is driving advances in AI and autonomous vehicles. What really excites me is that obviously it's the technologies we have that are driving the entertainment side of our business forward, but it really is the opportunities and the things our industry is doing to help non-entertainment purposes that are the sweet spot that's really interesting.

Mr. Martin Shields: Thank you.

[*Translation*]

The Chair: I now give the floor to Mr. Nantel.

Mr. Pierre Nantel: Thank you very much, Madam Chair.

Ms. Francoeur, Mr. Hilchie, thank you for being here with us.

Mr. Hilchie, I hope I have some time to speak to you. I am in fact going to try to be brief.

This industry is really blossoming. We constantly hear excellent news about it. In my opinion, the fact that there is a creative mass of workers in this area is promising for culture in general. In the evening, after working with you to earn a living, they don't become boring; they continue to create. It's really fantastic.

Ms. Francoeur, could you tell us about the space Stingray occupies in the world of music broadcasting? I think your enormous success is probably related to the high quality of your programmers. I'm thinking, among others, of Henry van den Hoogen, whom I met at Mix 96, or of Jean-Richard Lefebvre, who founded Galaxie, a network you purchased.

The service Stingray offers is in a way a new playing field. It's a service you offer to businesses. You can't subscribe to Stingray. You provide this service so that there is appropriate music in a Gap store, for instance. Are you the ones who do the programming?

Ms. Annie Francoeur: You are talking about the part that is addressed to commercial establishments. A business can, in fact, play the radio and play its own music, or do business with a music provider who does the programming for them, or choose an existing channel. Stingray is one of those services.

Mr. Pierre Nantel: I see.

Ms. Annie Francoeur: We then conclude a contract with the client and there are monthly fees for our service. We pay the royalties to the collective management companies; we do it instead of the client.

Mr. Pierre Nantel: In certain restaurants or boutiques, we see a SOCAN sticker. When we see that, we hope that the business operator reports what is played in his establishment. That means that you deal with all of that. The business people don't have to worry about it.

Ms. Annie Francoeur: Precisely. There is an administrative aspect we handle for them.

Mr. Pierre Nantel: Regarding copyright, I remember that when Sirius and XM launched their satellite radio service, everyone reckoned that they were peripheral players. They weren't considered very important. I was doing tracking and radio promotion, and that was the situation. Today, they are responsible, finally, for one of the largest copyright cheques our songwriters receive. These people, like you, take the trouble to go to industry meetings, such as the ADISQ meetings.

Do you think that your contribution to copyright is important, given that you also cover foreign markets? Regarding Sirius and XM, there may not be many people who listen to French-language radio in Illinois, but the fact remains that the United States is an enormous audience.

Is the situation the same for you when it comes to collecting copyright fees for Canadian artists abroad?

● (1240)

Ms. Annie Francoeur: It depends on the markets. Regarding our market penetration, I spoke earlier of 40 million households in 156 countries, but it depends on the service. We went about things gradually. In certain countries where Stingray Music is not available, another service is, for instance Concert TV or a live classical music channel. You have to understand that when we talk about Stingray Music, it is not available in the 156 countries. Market penetration is quite variable. Canada remains one of the biggest markets for Stingray Music with regard to market penetration and the royalties produced for the rights holders.

However, according to the regulations, we must provide a lot of Canadian content. Those channels are also accessible when the service is available in the United States, in Europe, and so on. We don't eliminate the Canadian artists from our programming. And so royalties are generated for Canadian artists who would otherwise receive nothing.

Mr. Pierre Nantel: I want to follow up on the question asked by my colleague, Mr. Boissonnault. The topic we are currently studying is complicated, and I say that all the time. I'd like to really understand. You submitted a proposal concerning your own service. Is that correct?

Ms. Annie Francoeur: Yes. We aren't the only ones involved, of course, but we would be the first ones affected because we are the main provider of background music in Canada. There are some smaller players, and some larger ones who are attempting to get into the market. If they were subject to the same requirements, Canadian artists and authors would receive more royalties.

[*English*]

Mr. Pierre Nantel: Tell me more.

[*Translation*]

This means that international players want to invest in this area. Have some of them already done so?

Ms. Annie Francoeur: There is Spotify, among others, that offers a similar service, called Spotify Business. This is a service that is similar to ours, and commercial establishments can access it through a Web platform. Spotify Business is not subject to any Canadian content minimum.

Mr. Pierre Nantel: That's very interesting. You are quite right to raise this point.

We would be grateful if you could send as much information as possible to the committee on that topic, such as what parts of the act are involved, and what type of services. I am rather well versed in Mr. Boyko's affairs, but I am nevertheless a bit confused.

[*English*]

I'll turn to you, Mr. Hilchie. This is a very interesting example, I must say. I remember somebody on the other side reacting to the fact that there has been a lawsuit that your member won against somebody who was putting.... This is great news. What part of the copyright was used in this specific case?

Mr. Jayson Hilchie: It was the section on TPMs, the fact that selling circumvention devices in Canada is illegal. Having them and selling them are illegal.

Mr. Pierre Nantel: For the benefit of all, what's TPM?

Mr. Jayson Hilchie: Sorry. It's technological protection measures. This individual was selling chips that would modify a video game console to allow it to play pirated goods that bypassed the encryption.

Mr. Pierre Nantel: It's quite obvious infringement.

Mr. Jayson Hilchie: But prior to 2012, you could not get a judgment on it being illegal. In fact, there was a judgment in Quebec that it was not, prior to the Copyright Act being passed.

Now we actually have the ability to go after infringers that are creating major issues. I think The Globe and Mail said that the judgment actually affirms the strength of the Copyright Act with respect to technological protection measures. That's why it's so important to us to make sure they remain.

Mr. Pierre Nantel: I think I have almost finished, right?

[*Translation*]

The Chair: Yes.

[*English*]

Mr. Pierre Nantel: Well, thank you very much.

[*Translation*]

The Chair: Very well.

[*English*]

Now we are going to Mr. Hogg, please, for questions and answers for seven minutes.

Mr. Gordie Hogg: Ms. Francoeur, you made reference to making some recommendations with respect to regulations and with respect to commercial background music. What would the impact of that be on the overall industry?

Ms. Annie Francoeur: I can't provide you with the information right now. This is not information that I have, because I don't know how much revenue is generated by other background music services suppliers. It's hard for me to establish how many royalties would be driven to the Canadian artists. We would believe it's significant, but we don't have any numbers.

● (1245)

Mr. Gordie Hogg: Certainly we've heard testimony from a number of composers who are saying that they get very little out of the downstream benefits that might normally accrue to them, and as we're seeing more online work, that is shrinking even more.

Ms. Annie Francoeur: My understanding is that most of these artists are complaining about the royalties, or the lack of royalties, generated by streaming services and online platforms. I'm talking about the traditional delivery mechanism where we play music in stores. I think the artists are receiving royalties through SOCAN and Re:Sound for the use of their music in the background of commercial establishments, but I think they could receive more if we would make sure that all music services would be subject to the same minimum of Canadian requirement.

Mr. Gordie Hogg: So even within the framework that you're talking about, in terms of Stingray, are you saying that they could receive more through that platform as well?

Ms. Annie Francoeur: Definitely.

Mr. Gordie Hogg: Would that take away from Stingray's revenue?

Ms. Annie Francoeur: It would.

Mr. Gordie Hogg: What type of impact do you think that would have, if we were to have some equitable process that was in existence prior to our getting all of this online streaming?

Ms. Annie Francoeur: I haven't made the calculation. It's something we can look into, if this is something you would be interested in having.

Mr. Gordie Hogg: Obviously, with digitization and the online... we've seen a dramatic shift in delivery systems, and through that process, there have been a number of changes to the amount of revenue that is generated by various participants. It seems as though the composers are one of those groups that have been negatively impacted.

Ms. Annie Francoeur: Let me correct that. In terms of royalties, that wouldn't change how much we are paying, because we are still paying based on the tariffs that exist to SOCAN and Re:Sound. What would change is the allocation of the amounts that we're paying. More Canadian artists would receive a portion of what we pay, as opposed to international artists.

Mr. Gordie Hogg: I think I understand, but....

Ms. Annie Francoeur: It's because the tariffs are built in a way that you pay either a minimum per commercial location or a percentage of revenue. Whatever we pay in royalties would remain the same. It's just that when SOCAN or Re:Sound distribute that money to their artists, the local artist would receive more because we have played more Canadian music, as opposed to famous international artists, where the money would go through SOCAN to their counterpart in the U.S. or U.K., which would then allocate to the international artists.

Mr. Gordie Hogg: Mr. Hilchie, you made reference to remuneration going to music that's used as background music in video games. Can you tell me how that is represented today in terms of quantum as opposed to before we got much further into live streaming?

Mr. Jayson Hilchie: Just to fully understand the question, how it is...?

Mr. Gordie Hogg: We've been hearing about all the dramatic changes we're all well aware of that have been happening over the last decade and probably longer, and more significantly, happening in the last number of years. Certainly if we look back at traditional sharing in terms of composers and game makers, those have started to shift.

I'm wondering whether or not you've seen much shift in terms of those you would use for background music for the video games you made reference to.

Mr. Jayson Hilchie: In fairness, I'm not on that side of the business, and based on some of the formulaic content I've heard here today, I'm glad I'm not, because of the percentage of revenue and things like that.

As I said earlier to Mr. Blaney, our game makers will have licensing and copyright deals with the rights holders, the collectives, or whoever in that particular case, and then that money will be distributed to the artist through the various formulas that exist in those systems, but I have no knowledge about what percentage that is.

Mr. Gordie Hogg: We're hearing from other testimony that it is shrinking and in some cases disappearing. I'm just trying to find out where that might be and what impact that would have on the two businesses you represent in that framework.

Mr. Jayson Hilchie: Yes, a lot of the games in our industry create their own music using outsourced artists, not necessarily taking a song from the radio and putting it in a game. In fact, most of the music in a game is built for that game, like a movie score would be built for a movie, to enhance the playing experience. As I said, each of those companies that made that game would be doing that.

I don't have data on the fact that it's decreasing, but as I said, our industry is now up to about $140 billion in sales. We are creating products now on all sorts of different platforms. The number of video games that are in the marketplace now is more than ever before. As I said, discoverability is one of the problems for us. I can only take an educated guess and say that our industry is generating demand for more music than it ever has before, simply based on the fact that we are creating more products than we ever have.

● (1250)

Mr. Gordie Hogg: Do copyright laws as they exist in Canada today provide sufficient protection to video game producers?

Mr. Jayson Hilchie: Not on everything, but the technological protection measures allow us to go after those who circumvent the encryption technologies that we use.

One of the other issues that presents itself, which I'll discuss more in-depth next week at the industry committee, is the notice and notice regime. We'd like to see an improvement in that regime, because there is a lot of confusion when someone gets a notice as to what goes in that notice and as to the ISPs with respect to sending them forward once they get sent from the rights holder.

Beyond that, we were very happy in 2012 with what we got in the Copyright Modernization Act. It wasn't everything, but it was a good compromise.

Our objective with this review is to ensure that what we got stays, and we're not specifically asking for any new material changes to it.

Mr. Gordie Hogg: So your answer to the question is that you do have sufficient protection now and you're quite comfortable with the business model that's working out of the copyright legislation as it exists in Canada.

Mr. Jayson Hilchie: You can always make improvements to it, but we have a lot better protection than we had prior to 2012, and I think that, given the fact that we're not asking for anything new—

Mr. Gordie Hogg: How does that protection compare to other jurisdictions, other countries, and other parts of the world?

Mr. Jayson Hilchie: Specifically around the notice regime, the ability to remove infringing content would be a plus, but we're really not advocating for that very strongly in this round. For us it's a matter of trying to get the notice and notice regime to work efficiently and properly.

The Chair: That was very interesting, but I'm sorry, you're out of time.

I'm going to move to Mr. Yurdiga, please, for five minutes.

Mr. David Yurdiga: Thank you, Madam Chair.

Thank you, guys, for coming in today.

I want to speak a little bit on gaming.

When my children were growing up, we bought the machine and the program, and that was it and they played all they wanted. The new platform is concerning for grandparents, as I am, in that your grandson or granddaughter phones you and wants a gift card.

What you guys have done is remarkable. Now it's a continuous revenue source. You don't sell only the game, you sell the costumes, armour, or whatever it may be. It's brilliant, and on behalf of all grandparents, stop.

Voices: Oh, oh!

Mr. David Yurdiga: No, but it seems like your industry is doing very well. It's always changing. It's harder for people to pirate. You don't want to lose your spot because you gain all this stuff. I don't think you guys have a big issue, from my perspective.

Are there any problems with piracy? I can't see it. It's changing too rapidly.

Mr. Jayson Hilchie: Most of the piracy that we encounter is digital piracy. A lot of it is on mobile games, clones and things like that. As I said in my opening remarks, a lot of the things that we have done to combat piracy have been the technological protection measures that we put in the games and in the boxes, but also the fact that we've moved now toward an online experience that requires you to create an account and log in to a server. You're not going to be able to get the functionality to play online with a pirate copy. It's just not going to read it.

A lot of the games, though, that still have single-player campaigns and are not network like that still represent an opportunity for pirates. One of the things happening is the software encryption programs that we will buy from other industries that do this are getting better and better, and it's taking longer and longer for the pirates to crack the code.

There used to be lots of media articles out there of a specific blockbuster game hitting the market, and on day one, the code was already on a peer-to-peer file-sharing website, and you could download that game and play it. That is now taking upwards of 30, 60, 90 days, in some cases, before that really ends up getting cracked. By then, you've sold the vast majority of the initial demand copies that you're going to sell. I'm not saying it's not a problem—it is—but it's not the problem that it used to be under a physical retailer.

Mr. David Yurdiga: What's in your favour is the voice and video interaction during the game. I'll be watching my grandson, and all of a sudden his friend appears there and they're networking back and forth.

● (1255)

Mr. Jayson Hilchie: There are networking features.

Mr. David Yurdiga: I think those mechanisms alleviated a lot of the issues with piracy, because everybody is connected somehow, so I don't think a pirated copy would work.

Mr. Jayson Hilchie: No, it won't work on the online functionality.

Mr. David Yurdiga: As technology is changing....

But the music industry hasn't really changed. It's from whatever apparatus you have. There's no interaction. It's just enjoying the music.

Is there technology out there to protect...? You can download anything you want in the greynet, I call it. You can get pirated music anywhere and it's no different from what you get from a paid service. I mentioned this earlier.

How can we police that in the music industry? Obviously, you do what you can, but is technology changing to protect the music industry, or is it the same as before?

Ms. Annie Francoeur: It has never been an issue for Stingray. Obviously, we've read articles; we've read about people complaining about piracy, and it hasn't really been an issue for Stingray. In most cases, we have to keep in mind that Stingray, rarely, or until very recently, wasn't a B2C business, it was a B2B business. Most of our services are offered through cable operators or through services like Amazon, etc. It's a bit more complicated, because we don't have the direct relationship with the end-user.

Mr. David Yurdiga: Thank you.

The Chair: We're pretty much out of time.

To both of our witnesses, thank you for your evidence today. We really appreciate it. That will bring an end to this meeting.

The meeting is adjourned.

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